

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE
CONTRACT 200

Docket No. MC2021-115

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE
CONTRACT 200 (MC2021-115)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2021-117

**USPS RESPONSE
TO STRATEGIC ORGANIZING CENTER SUPPLEMENTAL SUBMISSION
AND MOTION FOR CLARIFICATION**
(August 12, 2022)

The United States Postal Service hereby responds to the Strategic Organizing Center's (SOC) Supplemental Submission Regarding Motion Requesting Access to Non-Public Materials (hereinafter "Supplemental Submission"), filed August 5, 2022.¹ The Postal Service requests that the Commission decline to consider the Supplemental Submission, as both the Supplemental Submission itself and the requests made therein are inconsistent with the instructions contained in Commission Order No. 6189 and are not otherwise authorized by the Commission's rules. Additionally, if the Commission were inclined to take any action in response to the SOC's filing, the Postal Service requests that the Commission clearly establish the next procedural steps to be taken in

¹ The movant did not provide actual notice in advance of filing, as required by Rule 3011.301(b)(4), and so Rule 3011.301(c) provides for a seven-day response period.

these proceedings so as to allow the Postal Service and other interested parties an appropriate and meaningful opportunity to participate therein.

Procedural Background

SOC filed its original Motion Requesting Access to Non-Public Materials (hereinafter “Motion”) in these Dockets on May 12, 2022. The Postal Service responded in opposition to the Motion on May 18, 2022. On June 6, the Commission issued Order No. 6189, which denied SOC’s Motion without prejudice and held the proceedings in abeyance pending the parties’ filing of a joint statement after their counsel had met and conferred “in a good faith effort to narrow or resolve disputed issues and clarify the parties’ positions on any issues they cannot resolve.”

On August 5, 2022, after both parties had met, conferred, and agreed upon the Joint Statement, the Postal Service filed the Joint Statement on behalf of both parties, which summarized the nature of the discussions and indicated that the parties had failed to resolve or narrow disputed issues. The Postal Service expected that this matter would then return to the Commission for additional procedural steps and guidance. But shortly thereafter, and without any prior notice to the Postal Service, SOC filed its Supplemental Submission. In the Supplemental Submission, SOC attempts to make additional legal arguments to support its speculative search for a particular negotiated service agreement. Additionally, SOC makes the novel and unfounded suggestion that the Commission “immediately grant” its original Motion without granting the Postal Service or other interested parties the opportunity to respond to this surprise pleading.

SOC's Supplemental Submission Is Unauthorized and Improper

In Order No. 6189, the Commission denied SOC's Motion without prejudice. Therein, the Commission instructed the Postal Service and SOC to meet and confer in a good-faith effort to narrow or resolve disputed issues and file a joint statement at the conclusion of those discussions. Order No. 6189 also instructed SOC that it may refile a request for access to non-public materials in the appropriate docket(s) at least 7 calendar days after filing the joint statement. Additionally, the Commission determined as a threshold matter that the materials in the instant dockets (MC2021-115 and CP2021-117) have no relevance to SOC's allegations.

Since SOC filed its Supplemental Statement in the instant docket(s), we note at the outset that it has failed to follow the Commission's instructions that it refile its Motion in the appropriate docket(s) and again fails to satisfy the relevance requirements of 39 C.F.R. § 3011.301(b)(2)(ii). Moreover, in filing its Supplemental Statement on the same day as the Joint Statement, and without prior notice to the Postal Service, SOC also failed to follow the Commission's instructions that a new motion should be filed at least seven (7) calendar days after the filing of the Joint Statement. Additionally, 39 C.F.R. § 3011.301(d) states that "no reply to a response shall be filed, unless the Commission otherwise provides." Here, while SOC styles the filing as a Supplemental Submission, it is effectively a renewed motion in reply to the Postal Service's original Response in Opposition, filed May 18, 2022. Order No. 6189 did not "otherwise provide" for additional filings or replies beyond the Joint Statement.

For these reasons, the Commission should neither consider the Supplemental Statement as a properly-filed renewed motion for access to non-public information, nor consider the additional arguments made therein. Rather, in accordance with Order No. 6189 and 39 C.F.R. § 3011.301(d), the Postal Service respectfully submits that SOC's Supplemental Submission is unauthorized, procedurally deficient and improper. Finally, basic fairness requires that if the Commission were inclined to take action based on the Supplemental Submission, all interested parties should be provided an opportunity to respond.

Motion For Clarification of Procedural Posture

In light of the foregoing and in order to foster an orderly resolution of this matter, the Postal Service moves for clarification of the procedural posture of these Dockets as it pertains to SOC's Motion Requesting Access to Non-Public Materials. Order No. 6189 refrained from fully evaluating the merits of the Motion, instead dismissing it based on SOC's failure to meet the threshold relevance requirements of 39 C.F.R. § 3011.301(b)(2)(ii). Order No. 6189 suggests, but does not explicitly state, that SOC will be required to refile its Motion anew in what it may currently believe are the appropriate docket(s), thus giving both the Postal Service and any other interested parties appropriate opportunity to respond. However, beyond the Joint Statement, Order No. 6189 clearly did not authorize such a supplemental response. As the Postal Service stated in its response to SOC's Motion and stated numerous times in its consultations with counsel for SOC, the Postal Service is seriously concerned about the chilling effect that this sort of ill-supported and speculative search for commercially

sensitive contract information would have on the Postal Service's ability to do business via negotiated service agreements. The Postal Service has reason to believe that other potentially interested parties in the parcel shipping market will seek to respond to SOC's Motion once it is filed in the appropriate docket, and at the appropriate time, as directed by the Commission.

As it stands, consideration of SOC's Supplemental Statement at this point, in these Dockets, would give SOC a second bite at the apple, and reward SOC's continuing attempts to circumvent the normal and appropriate procedures applicable to its requests for highly sensitive commercial information. Additionally, this ongoing motions practice in the instant dockets unnecessarily involves an irrelevant party to the dispute at hand. Therefore, the Postal Service respectfully requests that instead of considering SOC's unauthorized Supplemental Submission, it would be helpful for the Commission instead to clarify the procedural posture of the instant proceedings.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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